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 11 WIND OF TRADE LLC
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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

WIND OF TRADE LLC, a Nevada limited
 liability company,

Plaintiff,

v.

MOSTAG INTERNATIONAL, INC., a
 Pennsylvania corporation,

Defendants.

Case No. CV 07 6280SC

**DECLARATION OF MICHAEL HIRSCH IN
 SUPPORT OF WIND OF TRADE'S EX PARTE
 MOTION FOR TEMPORARY RESTRAINING
 ORDER**

I, Michael Hirsch, declare:

1. I have personal knowledge of the facts stated herein and, if called as a witness, I could
 and would testify competently thereto.

2. I am a citizen and resident of San Francisco County, California, USA.

3. I am Vice President of Joseph Enterprises, Inc. ("JEI"), a corporation organized under
 the laws of California, that markets and distributes home and garden products, as well as novelty
 products, throughout the United States and Canada.

4. JEI has a business address of 425 California Street, Suite 300, San Francisco, CA
 94104.

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1 5. Wind of Trade LLC ("Wind of Trade") is the developer and importer of utility gloves
 2 designed for handling hot surfaces, which are flame resistant and withstand temperatures up to 540
 3 degrees Fahrenheit (hereafter the "'Ove' Glove Product").

4 6. Wind of Trade is a limited liability company organized under the laws of Nevada
 5 with a business address of Hughes Center, Suite 170-A 3763 Howard Hughes Parkway Las Vegas NV
 6 89109.

7 7. Wind of Trade has authorized JEI as its exclusive authorized North American
 8 distributor for its 'Ove' Glove Product.

9 8. Through considerable efforts, JEI has established a broad network of nearly 40,000
 10 national and local retailers throughout the United States for Wind of Trade. These include: nationwide
 11 mass market chains such as Target, Linens n' Things, and K-Mart; national drug store chains such as
 12 Walgreen's, Rite Aid, and CVS; hardware stores such as Ace Hardware, True Value, and Do-It Best
 13 outlets; regional grocery chains such as Kroeger, Fred Meyer, Meijer, Ralphs, Publix, and Winn
 14 Dixie; and Internet retailers such as Amazon.com and Drugstore.com. A true and correct copy of
 15 retailers for the 'Ove' Glove Product is attached hereto at Exhibit 1.

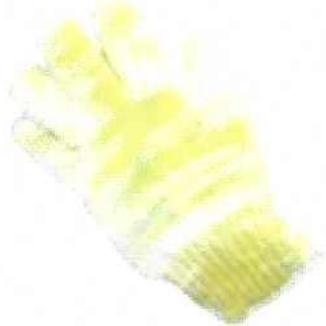
16 9. Since 2002, Wind of Trade has spent over \$8 million dollars on television
 17 advertising to consumers, advertising to the trade, and public relations efforts. Through this
 18 advertising, Wind of Trade reaches over 1.5 billion household impressions each year.

19 10. The 'Ove' Glove Product is recognized by consumers as an "AS SEEN ON TV"
 20 product and is frequently featured in retail outlets in a section identified as "AS SEEN ON TV," as
 21 well as in home and garden and house wares sections in stores and online, and on the official
 22 ASSEENONTV.COM website. A true and correct copy of the page featuring the 'Ove' Glove
 23 Product on the official AS SEEN ON TV website is attached hereto as Exhibit 2.

24 11. There is a website featuring the 'Ove' Glove Product at www.oveglove.com, which
 25 redirects the consumer to JEI's website at <http://www.jeiusa.com/oveglove.html>. The website
 26 provides detailed information about the product. A true and correct copy of the home page of the
 27 'OVE' GLOVE website is attached hereto as Exhibit 3.

1 12. The Wind products are offered under the 'OVE' GLOVE trademark, a mark that has
 2 been registered by Wind of Trade in the United States and elsewhere.

3 13. The 'Ove' Glove Product was first sold in commerce under the 'OVE' GLOVE
 4 mark at least as early as December 2001. A true and correct photograph of the original 'Ove' Glove
 5 Product is attached hereto as Exhibit 4.

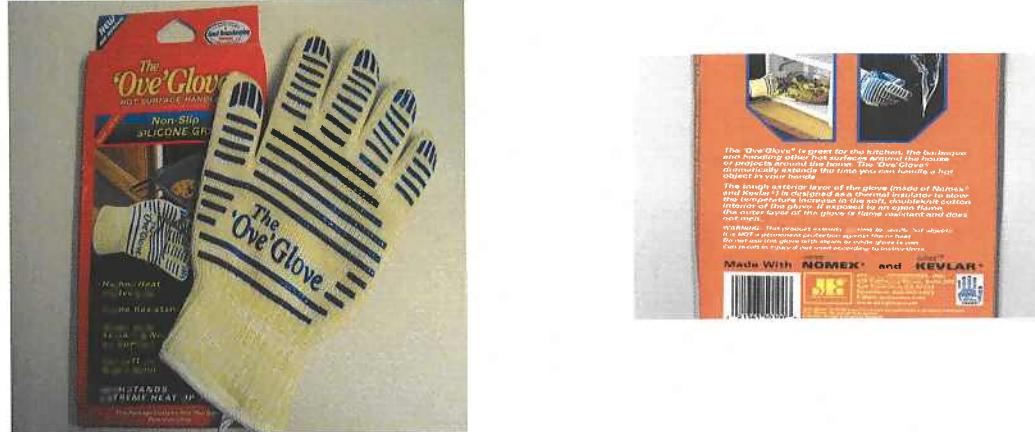


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 13 14. In 2006, Wind of Trade added silicone to the surface of the product to improve
 14 gripping capability. Wind of Trade applied the silicone in a distinctive design and adopted the design
 15 as a trademark on product packaging in order to distinguish its products in the marketplace. To my
 16 knowledge, the design pattern is unique and there is nothing similar in the hot surface handler
 17 marketplace. A true and correct photograph of the 'Ove' Glove Product is attached hereto as
 18 Exhibit 5. (hereafter the "Design Mark")



1 15. Wind of Trade commenced use of the Design Mark in commerce in September
 2 2006.

3 16. In 2007, Wind of Trade modified the design pattern on the gloves that is used as a
 4 trademark on product packaging. A true and correct photograph of the modified ‘Ove’ Glove Product
 5 is attached hereto as Exhibit 6 (hereafter the “New Design Mark”).



13 17. Wind of Trade commenced use of the New Design Mark in commerce in September
 14 2007.

15 18. Since 2002, Wind of Trade has been using genuine NOMEX® and KEVLAR®
 16 materials in the design and manufacture of its products, under license from DuPont.

17 19. The ‘Ove’ Glove Product has undergone extensive quality testing by third parties
 18 providing consumers with assurances that the products work as advertised, that is, the gloves are heat
 19 and flame resistant up to a temperature of 540 degrees Fahrenheit.

20 20. Due to the excellent quality and superior performance of the ‘Ove’ Glove Product,
 21 Wind of Trade has sold nearly 6 million gloves since December 2001, with a current suggested retail
 22 price of \$14.99.

23 21. Wind of Trade has established substantial goodwill and reputation with respect to its
 24 hot surface handler products and consumers purchase the ‘Ove’ Glove Product because of the
 25 consistent high-quality and effectiveness of the products as a hot surface handler.

1 22. Through substantial and continuous efforts, including sales, advertising, promotion,
2 and public relations, Wind of Trade has gained widespread recognition by the relevant consuming
3 public of the ‘OVE’ GLOVE word mark, the design marks, and associated trade dress.

4 23. On November 28, 2007, Wind of Trade learned that Mostag International Inc. is
5 selling various glove products for the purpose of handling hot surfaces on at least the Amazon.com
6 website and its related retailers. A true and correct copy of a photograph of a Mostag glove is shown
7 below.



13 24. In product listings on Amazon.com, Mostag featured the product shown below
14 referencing their product as a “**New Improved Original OVE GLOVE Hot Surface Handler with**
15 **Non-Slip Silicone Grip.**” A true and correct copy of this Mostag product placement on Amazon.com
16 is attached hereto as Exhibit 7.



26 25. As shown in the illustration above, Mostag refers to its product as the "New
27 Improved Original Ove Glove Hot Surface Handler With Non-slip Silicon Grip." (See Exhibit 11.)

1 This is the identical promotional language that Wind of Trade uses to advertise its product, as shown
 2 below:



4 **New Improved Original 'Ove' Glove Hot Surface Handler with Non-slip
 5 Silicone Grip by Joseph Enterprises**

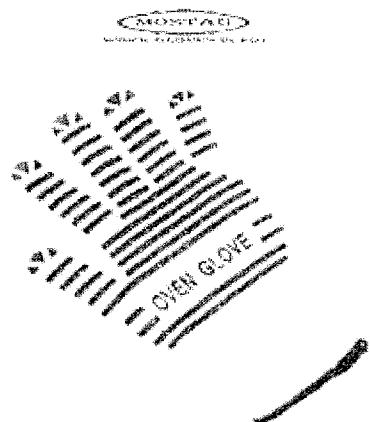
6 Buy now: \$19.99 \$19.25 6 Used & new from \$12.99

7 In Stock

8 [View all 21 items](#)

9 [Home & Garden](#) See all 15 items

10 26. Mostag also presented a glove product as follows: "**OVE GLOVE-Get a Grip On
 11 Hot Pots and Pans!**" A true and correct copy of this Mostag product placement on Amazon.com is
 attached hereto as Exhibit 8.



12 **Ove Glove - Get A Grip On Hot Pots And
 13 Pans!**

14 Other products by Mostag

15 No customer reviews yet. Be the first.

16 Price: \$19.99

Sale: \$12.99

You Save: \$7.00 (35%)

Availability: In Stock. Ships from and sold by MOSTAG INTERNATIONAL.

20 27. The pattern of the non-slip silicon grip adopted by Mostag is virtually identical to
 21 the Design Mark that Wind of Trade first adopted in September 2006.

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1 28. The ‘Ove’ Glove Product is being promoted right next to the Mostag product,
 2 Cost Detail: Toshiba v. HSI, ND Cal 4100 (Defense) (88400)
 showing that Mostag’s silicon grip design is obviously identical or virtually identical to our client’s

Category	Billable Amount
<u>DESIGN MARK</u>	
Consultation Fee	\$229,807.20
Foreign Patent Associate's Fee	\$213,156.15
Patent Validity Search	\$36,408.40
Translation Services	\$25,625.26
‘Ove’ Glove Copying - Outside Service	\$20,117.48
Legal Research (Lexis)	\$7,828.56
Legal Research (Westlaw)	\$5,909.63
The ‘Ove’ Glove Phone Calls/Phone Calls	\$5,390.20
Patent Associate's Fee	\$3,861.98
Legal Research (Dialog)	\$2,800.00
Color copying	\$2,199.27
PatentOrder.com	\$1,584.00
Document and Copyright Fees	\$1,233.00
Meals	\$651.92
Federal Express	\$617.86
Fax	\$595.50
Document Retrieval	\$548.42
Double time consumers to believe that the Mostag products are the same as or at least associated or	
Telephone	\$367.71
affiliated with Wind of Trade as a source of such heat resistant, hot surface handler products.	
Patent Copies	\$333.55
Patent Search	\$267.50
Reference Materials	\$239.43
for the purpose of handling hot surfaces, namely	\$139.00
NOMEX & KEVALR [sic], Withstands heat up to 540 degrees Farenheit [sic] and “OVE	
Outside Messenger Service	\$94.05
GLOVE (2 GLOVES VALUE PACK) – Extra Long Cuff Provide Extra Protection for Wrist &	
Postage	\$84.00
DHL Worldwide Courier	\$40.84
Arm Nomex® Made of DuPont NOMEX & KEVALR [sic], Withstands heat up to 540 degrees	
Farenheit [sic].” True and correct copies of these product placements are hereto attached as Exhibits	
9 and 10.	

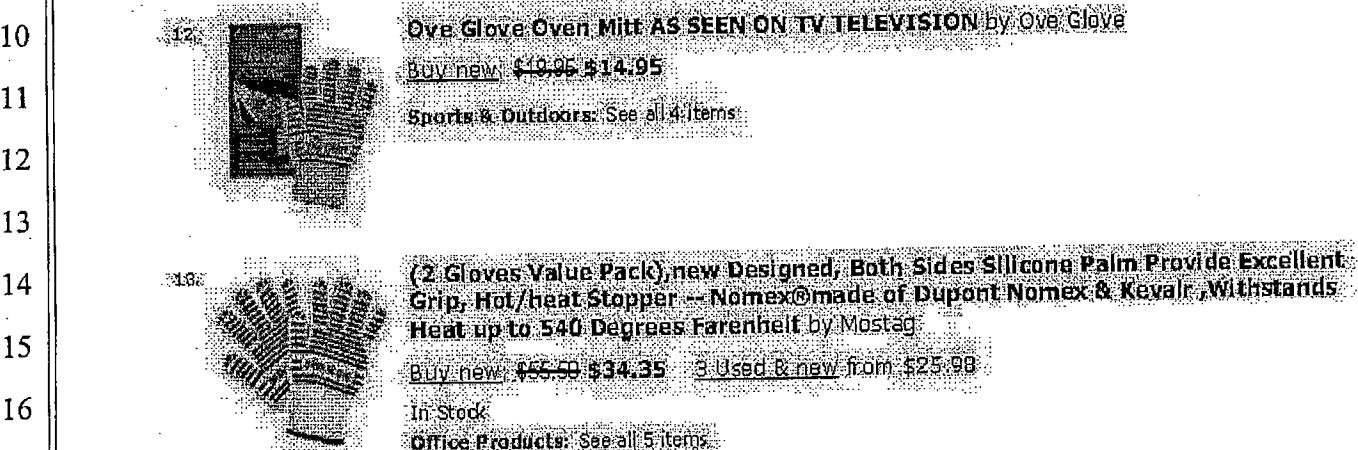
22 31. While we can attest to the genuineness of the materials used in the ‘Ove’ Glove
 23 Product and the reliability of the quality assurances made for the Wind product, there is enormous
 24 likelihood that substandard product quality and performance of Mostag’s product may cause
 25 consumers to doubt the effectiveness of this type of product.

26 32. Moreover, because consumers who purchase and use the Mostag products may be
 27 disappointed by the results and believe that this type of product does not work, consumer

1 dissatisfaction with Mostag's glove products will hurt Wind of Trade's premiere reputation in the
 2 heat resistant glove market.

3 33. Mostag continues to sell its heat resistant surface handler with a non-slip silicon
 4 grip that is fashioned identically to the Design Mark adopted by Wind of Trade in September 2006
 5 and virtually identical to the New Design Mark adopted by Wind of Trade in September 2007.

6 34. The Mostag product is even presented adjacent to the Ove' Glove Product in an
 7 Amazon search, which can readily be observed on pages 2, 3 and 4 (shown below) of the search
 8 results on Amazon.com for "ove gloves." A true and correct copy of the search result on
 9 amazon.com for "ove glove" is attached hereto as Exhibit 11.



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 19 I declare under penalty of perjury under the laws of the State of California that the
 20 foregoing is true and correct.

21 EXECUTED this 12th day of December, 2007, at San Francisco, California.

Michael Hirsch

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